Aviation Regulations to include an airworthiness directive which requires replacement or modification of the GCU filter modules on Boeing Model 737 series airplanes, was published in the Federal Register on June 17, 1988 (53 FR 22659).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The Air Transport Association (ATA) of America provided comments from five of its member operators:

One member questioned the need to include GCU P/N 915F212–4 within the applicability of the proposed rule. This member indicated that the filter module of the –4 unit has never failed and is of another type design than the filter module that is installed in the P/N 915F212–5 and 948F458–1 units. The FAA agrees. The final rule has been revised to include only Westinghouse GCU P/N 915F212–5 and P/N 948F458–1 as subject to the required replacement or modification actions.

One member stated that the problem appeared to be one of "infant mortality" and units that have not failed by the time they have operated for two years should not be affected. The FAA does not concur. The service history data available to the FAA does not support an "infant mortality" theory.

Several members requested that the proposed 12-month compliance time be extended, and stated that they will need a minimum of 18 months to accomplish the required work on their respective fleets. One member provided data to substantiate that the proposed compliance time will present a problem to all operators in timely acquisition and installation of required parts. The FAA has reviewed this data and has determined that the compliance time may be increased from 12 to 18 months without adversely affecting safety.

One commenter stated they have not experienced any problems with GCU filter module P/N 941D770–4, and requested that this part number be removed from the applicability of the rule. The FAA does not agree. This GCU filter module was used in GCU P/N 948F458–1 manufactured from June 1984 through July 1986, and in GCU P/N 915F212–5 starting April 1982. More than 50 percent of the failures in the last two years have involved the –4 GCU filter module. Therefore, the FAA has determined that it is appropriate that this filter module be included in this AD action.

Two commenters noted that the 1.5 manhour estimate per airplane, as indicated in the economic analysis, appeared low and that 8.0 manhours per airplane would be more accurate. The FAA has reviewed the estimation and concurs with the commenter's estimate, based on the "worst case" assumption, that is, three GCU's on every airplane will be affected and GCU filter modification will be performed instead of filter module replacement. The cost estimate has been revised, as reflected below, and is based on a worst case condition.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed with the revisions noted above.

There are approximately 1,500 Boeing Model 737 airplanes of the affected design in the worldwide fleet. It is estimated that 1,200 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $384,000.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, Boeing Model 737 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation Safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 737 series airplanes, certificated in any category. Compliance required within the next 18 months after the effective date of this AD, unless previously accomplished.

To prevent smoke in the cockpit and partial loss of electrical power caused by the failures of the Generator Control Unit (GCU) filter modules, accomplish the following:

A. Replace or modify the GCU filter modules, in Westinghouse GCU P/N 915F212–5 and GCU P/N 948F458–1, in accordance with Westinghouse Service Bulletin 87–101, dated March 1987, or Westinghouse Service Bulletin 87–102, dated August 1987.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Westinghouse, Electrical Systems Division, P.O. Box 989, Lima, Ohio 45802. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, 9010 East Marginal Way, Seattle, Washington.

This amendment becomes effective April 28, 1989.

Issued in Seattle, Washington, on March 10, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89–6403 Filed 3–17–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 86-ANE-25; Amdt. 39-6140]

Airworthiness Directives; Garrett Engine Division (Hereinafter Called "Garrett"), Allied-Signal, Inc., Models TPE331-25AA, -25AB, -25DA, -25DB, -25FA, -43A, -43BL, -47A, -55B, -61A, -1, -2, -2UA, -3U, -3UW, -5, -6, -6A, -8, -10, -10R, -10U, -10UA, -10UF, -10UG, 10UGR, -10UR, -11U Turboprop and TSE331-3U Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Garrett turboprop and turboshaft TPE/TSE331 engine models, which currently requires spectrometric analysis of oil samples or the replacement or rework of the turbine oil scavenge pump. This amendment is prompted by incidents that indicated that the Spectrometric Oil Analysis Program (SOAP) was not effective in detecting Beryllium/Copper (Be/Cu) nut erosion. This AD is needed to prevent blockage of the oil scavenge pump outlet port which could lead to erosion and failure of the Be/Cu main shaft nut. This AD requires the replacement or rework of the oil scavenge pump and retains the inspection of the spur gearshaft assembly which drives the oil scavenge pump.

DATES: *Effective*—April 9, 1989.

Compliance—As required in the body of the AD.

Incorporation by Reference—Approved by the Director of the Federal Register as of April 9, 1989.

ADDRESSES: The applicable engine manufacturer's service bulletin (SB) may be obtained from Garrett General Aviation Services Division, Distribution Center, 2340 East University, Phoenix, Arizona 85034.

A copy of the SB is contained in the Rules Docket, Docket No. 86-ANE-25, in the Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and may be examined between the hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Propulsion Branch, ANM-140L, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5246.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations by superseding AD 86-12-02, Amendment 39-5371 (51 FR 31607; September 4, 1986), applicable to certain Garrett turboprop and turboshaft TPE/TSE331 engine models, to require the replacement or rework of the oil scavenge pump assembly and inspection of the spur gearshaft length to ensure proper positioning of the spur gearshaft assembly, was published in the **Federal Register** on September 19, 1988 (53 FR 36342).

The proposal was issued after discovering that required SOAP was not effective in detecting Be/Cu nut erosion and that this erosion was not limited to infant mortality cases. Since this condition is likely to exist or develop on other Garrett TPE/TSE331 series engines of the same type design, this AD supersedes Amendment 39-5371, AD 86-12-02.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Even though no objections from the public were received, the wording in the final rule has been changed for clarity and does not change the requirements or the intent of the proposed rule.

The regulations adopted herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

The FAA has determined that this regulation involves 8,000 engines and the approximate cost would be $160 per engine. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT**".

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding to § 39.13 the following new airworthiness directive (AD), which supersedes AD 86-12-02, Amendment 39-5371 (51 FR 31607), as follows:

Garrett Engine Division, Allied-Signal, Inc. (formerly Garrett Turbine Engine Co., GTEC, formerly AIResearch Manufacturing Company of Arizona): Applies to Garrett Models TPE331-25AA, -25AB, -25DA, -25DB, -25FA, -43A, -43BL, -47A, -55B, -61A, -1, -2, -2UA, -3U, -3UW, -5, -6, -6A, -8, -10, -10R, -10U, -10UA, -10UF, -10UG, -10UGR, -10UR, -11U turboprop and TSE331-3U turboshaft engines.

Compliance is required as indicated, unless already accomplished.

To prevent turbine failure, accomplish the following:

(a) Inspect and modify applicable engines in accordance with the Accomplishment Instructions of Garrett Service Bulletin (SB) TPE-331-72-0533, Revision 2, dated March 11, 1988, at first access to the oil scavenge pump assembly, or within 1,800 operating hours after the effective date of this AD, or within 18 months after the effective date of the AD, whichever occurs first.

(b) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(c) Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 3229 East Spring Street, Long Beach, California 90806-2425.

(d) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, the Manager, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, Aircraft Certification Service, may adjust the compliance time specified in this AD.

Garrett SB TPE331-72-0533, Revision 2, dated March 11, 1988, identified and described in this document, is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received this

document from the manufacturer may obtain copies upon request to Garrett General Aviation Services Division, Distribution Center, 2340 East University, Phoenix, Arizona 85034. This document may also be examined at the Office of the Assistant Chief Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, Room 311, Docket No. 86-ANE-25, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

This amendment supersedes Amendment 39-5371 (51 FR 31607; September 4, 1986) AD 86-12-02.

This amendment becomes effective on April 9, 1989.

Issued in Burlington, Massachusetts, on February 1, 1989.

Jack A. Sain,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 89-6410 Filed 3-17-89; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 230, and 239

[Release No. 33-6825; File No. S7-4-88]

Regulation D; Accredited Investor and Filing Requirements

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission announces the adoption of an amendment to the definition of "accredited investor" for purposes of the section 4(6) and Regulation D exemptions from the registration requirements of the Securities Act of 1933 (the "Securities Act") to include those plans established and maintained by the governments of the States and their political subdivisions, as well as their agencies and instrumentalities for the benefit of their employees, that have total assets in excess of $5 million. Additional amendments to Regulation D also have been made. While the filing of Form D has been retained, it will no longer be a condition to any exemption under Regulation D. New Rule 507 will disqualify any issuer found to have violated the Form D filing requirement from future use of Regulation D. New Rule 508 provides that an exemption from the registration requirements will be available for an offer or sale to a particular individual or entity, despite failure to comply with a requirement of Regulation D, if the requirement is not designed to protect specifically the complaining person; the failure to comply is insignificant to the offering as a whole; and there has been a good faith and reasonable attempt to comply with all requirements of the regulation. Rule 508 specifies that the provisions of Regulation D relating to general solicitation, the dollar limits of Rules 504 and 505 and the limits of non-accredited investors in Rules 505 and 506 are deemed significant to every offering and therefore not subject to the Rule 508 defense. Further, the rule specifies that any failure to comply with a provision of Regulation D is actionable by the Commission under the Securities Act.[1] Changes in those requirements designed to reflect the "restricted" character of securities issued in a Regulation D transaction also have been adopted.

Additional new amendments to Regulation D revise the definitional provisions, relating to "aggregate offering price", the calculation of the number of purchasers, and "purchaser representative" to codify staff interpretive positions. Revisions also are adopted with respect to the informational requirements of Regulation D. Another amendment explicitly recognizes that an offering to the appropriate number of and/or sophistication of investors is acceptable, whether or not the issuer has a reasonable basis to believe that such is the case.

EFFECTIVE DATE: April 19, 1989.

FOR FURTHER INFORMATION CONTACT: Richard K. Wulff or William E. Toomey, (202) 272-2644, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: On December 20, 1988, the Commission published for comment [2] a number of proposed revisions and reproposals of amendments to Regulation D,[3] the limited offering exemptive provisions from the registration requirements of the Securities Act. Today, the Commission is adopting all of those proposals and reproposed amendments without change.

I. Amendments to Regulation D

A. Accredited Investors Release

The Commission initially proposed adding certain plans established and maintained by the governments of the states and their political subdivisions, as well as their agencies and instrumentalities for the benefit of their employees to the list of accredited investors [4] in March 1988.[5] This addition to the list of accredited investors was proposed because the language contained in the existing definition limits its coverage to plans "within the meaning" of Title I of the Employee Retirement Income Security Act of 1974 ("ERISA").[6] Since government plans are exempted from ERISA, they have not been considered to be accredited investors within the meaning of the rule. As initially proposed, a plan would have been deemed accredited if its trustee were a bank, savings and loan association, insurance company or registered investment adviser, and if the plan imposed standards of fiduciary responsibility similar to those imposed under ERISA. Commenters on this proposal felt that such plans should be accredited but took substantial issue with the criteria proposed, urging instead a standard similar to that imposed on ERISA plans, *i.e.*, some asset-based test.

In the Accredited Investor Release, the Commission, responding to these suggestions, proposed to include within the definition of the term "accredited investors" those governmental employee benefit plans that have total assets in excess of $5 million. All of the public commenters on this issue supported the Commission's proposal. The amendment being adopted today places governmental plans on the same footing as employee plans which are subject to ERISA.

B. 508 Release—New Rules 507 and 508 and Various Procedural Revisions to Regulation D

In the 508 Release, the Commission published for comment reproposals of new Rules 507 and 508, and new proposed amendments to various provisions of the regulation. Rules 507

[1] 15 U.S.C. 77a *et seq.*; in particular section 20 thereof, 15 U.S.C. 77t.

[2] Release Nos. 33-6811, 33-6812 (December 20, 1988) (54 FR 308, 309) ("Accredited Investor Release" and "508 Release" respectively). Nineteen persons commented on the Accredited Investor Release; eleven responded to the 508 Release. The comment letters are available at the Commission's Public Reference Room in Washington, DC.

[3] 17 CFR 230.501-230.508.

[4] The definition of "accredited investor" is the same for both section 4(6) and Regulation D transactions. Section 2(15) of the Securities Act and Rule 215, 17 CFR 230.215, provide the identical listing of investors as Rule 501(a). Amendments are being made today to Rule 215 to maintain the consistency.

[5] Release No. 33-6759 (March 3, 1988) [53 FR 7870].

[6] 29 U.S.C. 1101 *et seq.*

and 508 had been initially proposed for comment in March 1988.

(1) New Rule 507

The proposals to eliminate the Form D [7] filing requirement as a condition to every Regulation D exemption and the Rule 507 disqualification provisions were favorably received by the public commenters. These revisions have been adopted without change. The Rule 503 requirement to file a Form D within 15 days of the first sale of securities remains, but will no longer be a condition to the establishment of any exemption under Regulation D. Rule 507 will serve as a disqualification to the use of Regulation D for future transactions by any issuer, if it, or a predecessor or affiliate, has been enjoined by a court for violating the filing obligation established by Rule 503. The Commission has the authority to waive a disqualification upon a showing of good cause.[8]

(2) New Rule 508

As reproposed in December, Rule 508 provided that failure to comply with a term, condition or requirement of Regulation D would not cause a loss of the exemption for any offer or sale to a particular individual or entity if the person relying on the exemption were to demonstrate that (1) the term, condition or requirement violated was not directly intended to protect the complaining party, (2) the failure to comply was insignificant to the offering as a whole, and (3) a good faith and reasonable attempt was made to comply with all of the regulation's terms, conditions and requirements. In a separate provision, proposed Rule 508 indicated that any failure to comply would, nevertheless, be actionable by the Commission.[9] With regard to significance to the offering as a whole, the Commission proposal specifically indicated that the conditions relating to dollar ceilings, numerical purchaser limits and general solicitation would always be deemed significant and therefore beyond the protection of the rule.[10] The public comments supported the Commission proposal and Rule 508 has been adopted without change.[11]

In excluding general solicitation from the ambit of the Rule 508 defense, the Commission reiterates its view, expressed in the 508 Release, that, inasmuch as general solicitation is not defined in Regulation D, the question of whether or not particular activities constitute a general solicitation must always be determined in the context of the particular facts and circumstances of each case. Thus, for example, if an offering is structured so that only persons with whom the issuer and its agents have had a prior relationship [12] are solicited, the fact that one potential investor with whom there is no such prior relationship is called may not necessarily result in a general solicitation.

(3) Definitions

The Commission also proposed a number of revisions to the definitional provisions of Rule 501 to codify staff interpretations and to reduce ambiguities in the regulation. For example, the Commission proposed to amend the definition of "aggregate offering price" to indicate that payments made in a foreign currency would be translatable into U.S. dollars at the exchange rate in effect within a reasonable time period prior to or on the date of the sale of securities. The proposed amendments would also have provided that valuations, which must be made prior to the sale of the securities, of non-cash consideration must be reasonable when they are made.

The definition of the manner in which the number of purchasers in a Rule 505 or Rule 506 offering should be calculated would be clarified under the proposed amendments. Thus, when a corporation, partnership or other entity must be pierced through to its beneficial owners because it has been formed for the specific purpose of making an investment, the provisions of Rule 501(e)(1) governing exclusions from the calculation, such as those applicable to related parties sharing the same household, would apply to the beneficial owners. The Commission also proposed to revise the definition of "purchaser representative" so that disclosure of material conflicts of interest might be made a reasonable time before purchase rather than (as currently required) prior to the purchaser's acknowledgement of the purchaser representative as his agent.

Commenters endorsed the proposed revisions and the amendments have been adopted as proposed.

(4) Information Requirements

The Commission also proposed to eliminate the requirement to provide specified disclosure to an accredited investor whenever one or more purchasers in the transaction are non-accredited investors. Additional amendments were proposed to clarify that non-accredited investors must be advised of, and furnished upon request, all material information furnished to accredited investors. Under the proposed amendments, required information would have to be furnished a reasonable time prior to sale. Finally, the Commission proposed that written disclosure of resale restrictions be required to be provided to all non-accredited investors in Rule 505 and 506 offerings.

In general, the commenters supported these proposals.[13] These revisions will remove uncertainties in the terminology of the regulation and ensure that those investors most likely to be unaware of the transfer restrictions applicable to most Regulation D securities have written information in this regard. These provisions have been adopted as proposed.

The amendment with regard to Rule 502(b)(2)(i)(D) concerning the certification requirements for certain foreign issuers also has been adopted, eliminating a confusing reference to inapplicable disclosure standards.

(5) Demonstrating the "Restricted" Nature of the Securities

Under the Commission's proposal in the 508 Release, the list of actions formerly required by Rule 502(d) in order to demonstrate reasonable care that purchasers in a Regulation D transaction are not underwriters, *i.e.*, purchaser inquiry, written notification and legending, would have become a non-exclusive method of satisfying the provision. The commenters also supported this provision. Rule 502(d) has thus been amended as proposed.

---

[7] 17 CFR 239.500.

[8] In order to facilitate the processing of waiver requests under this provision, the Commission has delegated authority to the Director of the Division of Corporation Finance to grant such applications in appropriate cases, and has amended its delegation of authority rules in this regard. The Commission finds, in accordance with section 553(b) of the Administrative Procedure Act, 5 U.S.C. 553(b), that this action relates solely to agency organization, procedure or practice and thus obviates the necessity for notice and prior publication.

[9] *See* section 20 of the Securities Act, 15 U.S.C. 77t.

[10] 17 CFR 230.502(c), 230.504(b)(2)(i), 230.505(b)(2)((i), (ii), and 230.506(b)(2)(i).

[11] Several of the commenters objected to the elimination of certain items from the coverage of insignificance; another objected to the insignificance to the offering as a whole concept.

[12] The Commission's staff has issued a number of interpretive letters concerning the general solicitation requirement which have involved prior relationships, *e.g.*, *In re* Mineral Lands Research and Marketing Corp. (November 4, 1985). The staff has never suggested, and it is not the case, that prior relationship is the only way to show the absence of a general solicitation.

[13] Several of the commenters objected to the imposition of the writing requirement on resale restrictions.

(6) Revisions to Rule 504

Rule 504 provides an exemption for offerings by companies which are neither reporting companies under Section 13 or 15(d) of the Securities Exchange Act of 1934 [14] nor investment companies registered or required to be registered under the Investment Company Act of 1940 [15] for up to $1 million. In the 508 Release, the Commission proposed to add a requirement that an issuer provide purchasers in a Rule 504 transaction written disclosure of any resale restrictions and this requirement is being adopted today. In discussing this requirement in the 508 Release, the Commission noted that the provision would make it impossible to rely on Rule 504 to provide an exemption for an issue that otherwise would comply with the conditions of the exemption, albeit inadvertently. Commenters were asked to address the question as to whether, at least under some circumstances (such as a transaction involving a limited number of participants or a small amount of money) the delivery of such a written statement need not be required. The North American Securities Administrators Association, Inc. ("NASAA") and others urged the Commission to adopt the provision as proposed.[16] While the Commission continues to believe that such an exclusion may be appropriate, it is persuaded that the regulation should be amended as proposed and that, as suggested in the NASAA comment letter, the states and the Commission should work together to develop a mutually acceptable resolution of the issue. In any case, the availability of the statutory exemption under section 4(2) of the Securities Act is unaffected by today's action on this matter.

(7) Revisions to Rules 505 and 506

The Commission also proposed to amend Rules 505 and 506 to reflect expressly the staff interpretations that the requirements of those rules are satisfied whether or not the issuer had a reasonable belief as to the number of non-accredited investors or their sophistication, as long as the number and sophistication requirements are in fact met. No objections were raised with regard to these proposals by the commenters. The changes have been made as proposed.

II. NASAA Cooperation

The Commission is pleased to acknowledge the continuing cooperation of NASAA.[17] Because Regulation D serves as the core for the Uniform Limited Offering Exemption ("ULOR"),[18] an official policy guideline of NASSA,[19] this cooperation is essential to continuing the uniformity between Federal and State exemptive systems envisions by the Congressional mandate set forth in section 19(c) of the Securities Act.[20] The Commission understands that the membership of NASSA has supported the amendments to Regulation D being made today. Further, amendments to ULOE are presently being formulated by the NASAA Small Business Capital Formation Committee incorporating these amendments and, where appropriate, making additional changes which apply the principles reflected in these amendments.

III. Availability of Final Regulatory Flexibility Analysis

A final Regulatory Flexibility Analysis regarding the revisions to Regulation D has been prepared in accordance with the Regulatory Flexibility Act. A summary of the corresponding Initial Regulatory Flexibility Analyses were included in the Accredited Investor Release and the 508 Release, respectively. Members of the public who wish to obtain a copy of the final Regulatory Flexibility Analysis should contact Twanna Young in the Office of Small Business Policy, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

IV. Cost-Benefit Analysis

No specific data was provided on the Commission's request for costs and benefits of the proposals. Nonetheless, all of the amendments which are designed to facilitate compliance or reduce regulatory burden should provide significant benefits to issuers, reduce their costs of compliance without having a significant impact upon the protection of investors.

V. Conforming Amendment to the Description of Form D

On October 2, 1986, the Commission adopted significant changes to Form D and its filing requirements.[21] Through an oversight, the description of the Form contained in the Code of Federal Regulations was not similarly revised. The Commission is making the conforming amendments at this time. Because this action is a conforming amendment that involves no substantive change, the Commission finds that there is good cause to dispense with the prior notice and public procedure of the Administrative Procedure Act,[22] which is unnecessary under these circumstances since prior notice was given and public comment received on the substance of the change before the amendments were adopted in 1986.

VI. Statutory Basis, Text of Amendments and Authority

The amendments to the Commission's rules are being made pursuant to sections 2(15), 3(b), 4(2), 4(6), 19(a) and 19(c) of the Securities Act.

List of Subjects in 17 CFR Parts 200, 230 and 239

Administrative practice and procedure, Freedom of information, Privacy, Reporting and recordkeeping requirements Securities.

Text of Amendments

In accordance with foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION REQUESTS

1. The authority citation for Part 200 continues to read, in part, as follows:

Authority: Secs. 19, 23, 48 Stat. 85, 901, as amended, sec. 20, 49 Stat. 833, sec. 319, 53 Stat. 1173, secs. 38, 211, 54 Stat. 841, 855; 15 U.S.C. 77s, 78w, 79t, 77sss, 80a–37, 80b–11, unless otherwise noted. * * *

2. Section 200.30–1 is amended by revising paragraph (d) as follows:

§ 200.30–1 Delegation of authority to Director of Division of Corporation Finance.

* * * * *

(d) With respect to the Securities Act of 1933 (15 U.S.C. 77a, *et seq.*) and

---

[14] 15 U.S.C. 78m, 78o(d).

[15] 15 U.S.C. 80a–1 *et seq.*

[16] "[W]e strongly urge the Commission accept the proposed Rule 504 without further modification, and if the Commission considers the matter to be of sufficient importance, that it be the subject of further discussions. Since both the Commission and NASAA are in basic agreement that rules should not have the effect of penalizing the small, innocent offeror and further, that rules should not have the effect of facilitating fraudulent activity, such discussions may may produce a mutually acceptable resolution of this issue." Letter from NASAA dated February 21, 1989, contained in File No. S7–4–88.

[17] NASAA is an association of the securities administrators of each of the 50 states, the District of Columbia, Puerto Rico and several of the Canadian provinces.

[18] CCH NASAA Rep. ¶6201 at 6101.

[19] An official policy guideline represents endorsement of a principle which NASAA believes has general application. NASAA has no power to enact legislation, promulgate regulations or otherwise bind the legislatures or administrative agencies of its members.

[20] 15 U.S.C. 77s(c).

[21] Release No. 33–6663 (October 2, 1986) (51 FR 36385).

[22] 5 U.S.C. 553(b).

Regulation D thereunder (§ 230.501, *et seq.* of this chapter), to authorize the granting of applications under Rule 505(b)(2)(iii)(C), (§ 230.505(b)(2)(iii)(C) of this chapter) and under Rule 507(b) (§ 230.507(b) of this chapter) upon the showing of good cause that it is not necessary under the circumstances that the exemption under Regulation D be denied.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

3. The authority citation for Part 230 continues to read, in part, as follows:

Authority: Sections 230.100 to 230.174 issued under Sec. 19, 48 Stat. 85 as amended; 15 U.S.C. 77s, * * *

4. Section 230.215 is amended by revising paragraph (a) as follows (the introductory text is republished):

§ 230.215 Accredited investor.

The term "accredited investor" as used in section 2(15)(ii) of the Securities Act of 1933 (15 U.S.C. 77b(15)(ii)) shall include the following persons:

(a) Any savings and loan association or other institution specified in section 3(a)(5)(A) of the Act whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934; any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of $5,000,000; any employee benefit plan within the meaning of Table I of the Employee Retirement Income Security Act of 1974, if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such Act, which is a savings and loan association, or if the employee benefit plan has total assets in excess of $5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;

* * * * *

5. Section 230.501 is amended by revising the introductory text, paragraphs (a)(1), (c), (e)(2) and (h)(4) as follows ((e) and (h) introductory texts are republished; notes following (h)(4) remain unchanged):

§ 230.501 Definitions and terms used in Regulation D.

As used in Regulation D (§§ 230.501–230.508), the following terms shall have the meaning indicated:

(a) * * *

(1) Any bank as defined in section 3(a)(2) of the Act, or any savings and loan association or other institution as defined in section 3(a)(5)(A) of the Act whether acting in its individual or fiduciary capacity; any broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934; any insurance company as defined in section 2(13) of the Act; any investment company registered under the Investment Company Act of 1940 or a business development company as defined in section 2(a)(48) of that Act; any Small Business Investment Company licensed by the U.S. Small Business Administration under section 301(c) or (d) of the Small Business Investment Act of 1958; any plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of $5,000,000; any employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 if the investment decision is made by a plan fiduciary, as defined in section 3(21) of such act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of $5,000,000 or, if a self-directed plan, with investment decisions made solely by persons that are accredited investors;

* * * * *

(c) *Aggregate offering price.* "Aggregate offering price" shall mean the sum of all cash, services, property, notes, cancellation of debt, or other consideration to be received by an issuer for issuance of its securities. Where securities are being offered for both cash and non-cash consideration, the aggregate offering price shall be based on the price at which the securities are offered for cash. Any portion of the aggregate offering price attributable to cash received in a foreign currency shall be translated into United States currency at the currency exchange rate in effect at a reasonable time prior to or on the date of the sale of the securities. If securities are not offered for cash, the aggregate offering price shall be based on the value of the consideration as established by bona fide sales of that consideration made within a reasonable time, or, in the absence of sales, on the fair value as determined by an accepted standard. Such valuations of non-cash consideration must be reasonable at the time made.

* * * * *

(e) *Calculation of number of purchasers.* For purposes of calculating the number of purchasers under §§ 230.505(b) and 230.506(b) only, the following shall apply:

* * * * *

(2) A corporation, partnership or other entity shall be counted as one purchaser. If, however, that entity is organized for the specific purpose of acquiring the securities offered and is not an accredited investor under paragraph (a)(8) of this section, then each beneficial owner of equity securities or equity interests in the entity shall count as a separate purchaser for all provisions of Regulation D (§§ 230.501–230.508), except to the extent provided in paragraph (e)(1) of this section.

* * * * *

(h) *Purchaser representative.* "Purchaser representative" shall mean any person who satisfies all of the following conditions or who the issuer reasonably believes satisfies all of the following conditions:

* * * * *

(4) Discloses to the purchaser in writing a reasonable time prior to the sale of securities to that purchaser any material relationship between himself or his affiliates and the issuer or its affiliates that then exists, that is mutually understood to be contemplated, or that has existed at any time during the previous two years, and any compensation received or to be received as a result of such relationship.

* * * * *

6. Section 230.502 is amended by revising the introductory text, revising paragraph (b)(1) including a new Note thereto, revising paragraph (b)(2)(i) (introductory text), (b)(2)(i)(D), (b)(2)(ii) (introductory text), (b)(2)(iii) and (b)(2)(iv), adding a new paragraph (b)(2)(vii), revising paragraph (d) introductory text and adding a new (d) concluding paragraph thereto, as follows:

§ 230.502 General conditions to be met.

The following conditions shall be applicable to offers and sales made under Regulation D (§§ 230.501–230.508):

* * * * *

(b) *Information requirements*—(1) *When information must be furnished.* If the issuer sells securities under § 230.505 or § 230.506 to any purchaser that is not an accredited investor, the issuer shall furnish the information specified in paragraph (b)(2) of this section to such purchaser a reasonable time prior to sale. The issuer is not required to furnish the specified information to purchasers when it sells

securities under § 230.504, or to any accredited investor.

Note: When an issuer provides information to investors pursuant to paragraph (b)(1), it should consider providing such information to accredited investors as well, in view of the anti-fraud provisions of the federal securities laws. In addition, specific disclosure requirements regarding limitations on resale are contained in § 230.504(b)(2)(ii)

(2) *Type of information to be furnished.* (i) If the issuer is not subject to the reporting requirements of section 13 or 15(d) of the Exchange Act, at a reasonable time prior to the sale of securities the issuer shall furnish to the purchaser the following information, to the extent material to an understanding of the issuer, its business, and the securities being offered:

* * * * *

(D) If the issuer is a foreign private issuer eligible to use Form 20–F (§ 249.220f of this chapter), the issuer shall disclose the same kind of information required to be included in a registration statement filed under the Act on the form that the issuer would be entitled to use. The financial statements need be certified only to the extent required by paragraph (b)(2)(i)(B) or (C), as appropriate.

(ii) If the issuer is subject to the reporting requirements of section 13 or 15(d) of the Exchange Act, at a reasonable time prior to the sale of securities the issuer shall furnish to the purchaser the information specified in paragraph (b)(2)(ii)(A) or (B) of this section, and in either event the information specified in paragraph (b)(2)(ii)(C) of this section:

* * * * *

(iii) Exhibits required to be filed with the Commission as part of a registration statement or report, other than an annual report to shareholders or parts of that report incorporated by reference in a Form 10–K report, need not be furnished to each purchaser that is not an accredited investor if the contents of material exhibits are identified and such exhibits are made available to a purchaser, upon his written request, a reasonable time prior to his purchase.

(iv) At a reasonable time prior to the sale of securities to any purchaser that is not an accredited investor in a transaction under § 230.505 or § 230.506, the issuer shall furnish to the purchaser a brief description in writing of any material written information concerning the offering that has been provided by the issuer to any accredited investor but not previously delivered to such unaccredited purchaser. The issuer shall furnish any portion or all of this information to the purchaser, upon his written request a reasonable time prior to his purchase.

* * * * *

(vii) At a reasonable time prior to the sale of securities to any purchaser that is not an accredited investor in a transaction under § 230.505 or § 230.506, the issuer shall advise the purchaser of the limitations on resale in the manner contained in paragraph (d)(2) of this section. Such disclosure may be contained in other materials required to be provided by this paragraph.

* * * * *

(d) *Limitations on resale.* Except as provided in § 230.504(b)(1), securities acquired in a transaction under Regulation D shall have the status of securities acquired in a transaction under section 4(2) of the Act and cannot be resold without registration under the Act or an exemption therefrom. The issuer shall exercise reasonable care to assure that the purchasers of the securities are not underwriters within the meaning of section 2(11) of the Act, which reasonable care may be demonstrated by the following:

* * * * *

While taking these actions will establish the requisite reasonable care, it is not the exclusive method to demonstrate such care. Other actions by the issuer may satisfy this provision. In addition, §§ 230.502(b)(2)(vii) and 230.504(b)(2)(ii) require the delivery of written disclosure of the limitations on resale to investors in certain instances.

7. Section 230.503 is amended by revising paragraph (a) as follows:

§ 230.503 Filing of notice of sales.

(a) An issuer offering or selling securities in reliance on § 230.504, § 230.505 or § 230.506 shall file with the Commission five copies of a notice on Form D (17 CFR 239.500) no later than 15 days after the first sale of securities.

* * * * *

8. Section 230.504 is amended by revising paragraph (b)(1) and adding a new paragraph (b)(2)(ii) after Note 3 as follows:

§ 230.504 Exemption for limited offerings and sales of securities not exceeding $1,000,000.

* * * * *

(b) *Conditions to be met*—(1) *General Conditions.* To qualify for exemption under this § 230.504, offers and sales must satisfy the terms and conditions of §§ 230.501 and 230.502, except that the provisions of § 230.502(c) and (d) shall not apply to offers and sales of securities under this § 230.504 that are made:

(i) Exclusively in one or more states each of which provides for the registration of the securities and requires the delivery of a disclosure document before sale and that are made in accordance with those state provisions; or

(ii) In one or more states which have no provision for the registration of the securities and the delivery of a disclosure document before sale, if the securities have been registered in at least one state which provides for such registration and delivery before sale, offers and sales are made in the state of registration in accordance with such state provisions, and such document is in fact delivered to all purchasers in the states which have no such procedure before the sale of the securities.

(2) * * *

(ii) *Advice about the limitations on resale.* Except where the provision does not apply by virtue of paragraph (b)(1) of this section, the issuer, at a reasonable time prior to the sale of securities, shall advise each purchaser of the limitations on resale in the manner contained in paragraph (d)(2) of § 230.502.

9. Section 230.505 is amended by revising paragraph (b)(1) and (b)(2)(ii) as follows:

§ 230.505 Exemption for limited offers and sales of securities not exceeding $5,000,000.

* * * * *

(b) *Conditions to be met*—(1) *General conditions.* To qualify for exemption under this section, offers and sales must satisfy the terms and conditions of §§ 230.501 and 230.502.

(2) * * *

(ii) *Limitation on number of purchasers.* There are no more than or the issuer reasonably believes that there are no more than 35 purchasers of securities from the issuer in any offering under this section.

* * * * *

10. Section 230.506 is amended by revising paragraphs (b)(1), (b)(2)(i) and (ii) as follows (the note following (b)(2)(i) remains unchanged):

§ 230.506 Exemption for limited offers and sales without regard to dollar amount of offering.

* * * * *

(b) *Conditions to be met*—(1) *General conditions.* To qualify for an exemption under this section, offers and sales must satisfy all the terms and conditions of §§ 230.501 and 230.502.

(2) *Specific Conditions*—(i) *Limitation on number of purchasers.* There are no more than or the issuer reasonably

believes that there are no more than 35 purchasers of securities from the issuer in any offering under this section.

* * * * *

(ii) *Nature of purchasers.* Each purchaser who is not an accredited investor either alone or with his purchaser representative(s) has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment, or the issuer reasonably believes immediately prior to making any sale that such purchaser comes within this description.

11. By adding a new § 230.507 to read as follows:

§ 230.507 Disqualifying provision relating to exemptions under §§ 230.504, 230.505 and 230.506.

(a) No exemption under § 230.505, § 230.505 or § 230.506 shall be available for an issuer if such issuer, any of its predecessors or affiliates have been subject to any order, judgment, or decree of any court of competent jurisdiction temporarily, preliminary or permanently enjoining such person for failure to comply with § 230.503.

(b) Paragraph (a) of this section shall not apply if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption be denied.

12. By adding a new § 230.508 to read as follows:

§ 230.508 Insignificant deviations from a term, condition or requirement of Regulation D.

(a) A failure to comply with a term, condition or requirement of § 230.504, § 230.505 or § 230.506 will not result in the loss of the exemption from the requirements of section 5 of the Act for any offer or sale to a particular individual or entity, if the person relying on the exemption shows:

(1) The failure to comply did not pertain to a term, condition or requirement directly intended to protect that particular individual or entity; and

(2) The failure to comply was insignificant with respect to the offering as a whole, provided that any failure to comply with paragraph (c) of § 230.502, paragraph (b)(2)(i) of § 230.504, paragraphs (b)(2)(i) and (ii) of § 230.505 and paragraph (b)(2)(i) of § 230.506 shall be deemed to be significant to the offering as a whole; and

(3) A good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of § 230.504, § 230.505 or § 230.506.

(b) A transaction made in reliance on § 230.504, § 230.505 or § 230.506 shall comply with all applicable terms, conditions and requirements of Regulation D. Where an exemption is established only through reliance upon paragraph (a) of this section, the failure to comply shall nonetheless be actionable by the Commission under section 20 of the Act.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

13. The authority citation for Part 239 continues to read, in part, as follows:

Authority: The Securities Act of 1933, 15 U.S.C. 77a, *et seq.*

14. Section 239.500 is revised as follows:

§ 230.500 Form D, notice of sales of securities under Regulation D and section 4(6) of the Securities Act of 1933.

(a) Five copies of a notice on this form shall be filed with the Commission no later than 15 days after the first sale of securities in an offering under Regulation D (§ 230.501—§ 230.508 of this chapter) or under section 4(6) of the Securities Act of 1933.

(b) One copy of every notice on Form D shall be manually signed by a person duly authorized by the issuer.

(c) When sales are made under § 230.505, the notice shall contain an undertaking by the issuer to furnish to the Commission, upon the written request of its staff, the information furnished to non-accredited investors.

(d) Amendments to notices filed under paragraph (a) need only report the issuer's name and the information required by Part C and any material change in the facts from those set forth in Parts A and B.

(e) A notice on Form D shall be considered filed with the Commission under paragraph (a) of this section:

(1) As of the date on which it is received at the Commission's principal office in Washington DC; or

(2) As of the date on which the notice is mailed by means of United States registered or certified mail to the Commission's principal office in Washington, DC, if the notice is delivered to such office after the date on which it is required to be filed.

By the Commission.

March 14, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-6447 Filed 3-17-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 24

Current IRS Interest Rate Used in Calculating Interest on Overdue Accounts and Refunds

AGENCY: U.S. Customs Service, Treasury.

ACTION: Notice of calculation of interest.

SUMMARY: The Tax Reform Act of 1986 established a new method of determining the adjusted rate of interest on applicable overpayments or underpayments of Customs duties. The new method provides a two-tier system based on the short-term federal rate and is adjusted quarterly. This notice advises the public that the interest rates, as set by the Internal Revenue Service, will be 12 percent for underpayments and 11 percent for overpayments for the quarter beginning April 1, 1989. It is being published for the convenience of the importing public and Customs personnel.

EFFECTIVE DATE: April 1, 1989.

FOR FURTHER INFORMATION CONTACT: Robert B. Hamilton, Jr., Revenue Branch, National Finance Center, U.S. Customs Service, 6026 Lakeside Boulevard, Indianapolis, Indiana 46278 (317) 298-1308.

SUPPLEMENTARY INFORMATION:

Background

By notice published in the **Federal Register** on January 5, 1987 (52 FR 255), Customs advised the public that the Tax Reform Act of 1986 (Pub. L. 99-514) amended 26 U.S.C. 6621, and mandated a new method of determining the interest rate paid on applicable overpayments or underpayments of Customs duties. The new method provides a two-tier system based on the short-term federal rate. As amended, 26 U.S.C. 6621 provides that the interest rate that Treasury pays on overpayments will be the short-term federal rate plus two percentage points. The interest rate paid to the Treasury for underpayments will be the short-term federal rate plus three percentage points. The rates will be rounded to the nearest full percentage.

The interest rates, which are to fluctuate quarterly, are determined by the Internal Revenue Service on behalf of the Secretary of the Treasury based on the average market yield on outstanding marketable obligations of the U.S. with remaining periods to maturity of three years or less. These